

CHAPTER NO. 68

HOUSE BILL NO. 2515

By Representatives Eckles, Hood, Beavers

Substituted for: Senate Bill No. 2930

By Senator Womack

AN ACT to amend Chapter 284 of the Private Acts of 1915, as amended by Chapters 12 and 233 of the Private Acts of 1951, Chapter 117 of the Private Acts of 1961, Chapter 79 of the Private Acts of 1977, Chapter 3 of the Private Acts of 1985, Chapter 15 of the Private Acts of 1989, Chapter 214 of the Private Acts of 1992, Chapters 24 and 42 of the Private Acts of 1999, and any other acts amendatory thereto, relative to the charter of the Town of Smyrna.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Chapter 284 of the Private Acts of 1915; as amended by Chapters 12 and 233 of the Private Acts of 1951, Chapter 117 of the Private Acts of 1961, Chapter 79 of the Private Acts of 1977, Chapter 3 of the Private Acts of 1985, Chapter 15 of the Private Acts of 1989, Chapter 214 of the Private Acts of 1992, Chapters 24 and 42 of the Private Acts of 1999, and any other acts amendatory thereto; being the charter of the Town of Smyrna, is hereby amended by deleting the language of the charter in its entirety and by substituting instead the following:

ARTICLE I

Incorporation, Boundaries

Section 1.01. Incorporation. The Town of Smyrna in the County of Rutherford, and the inhabitants thereof, are hereby constituted a body politic and corporate under the style and name of the "Town of Smyrna", and under that name may have perpetual succession; may sue and be sued; plead and be impleaded in all the courts; may purchase, receive and hold real, personal and mixed property within or without such town, for municipal purposes, and may sell, lease, or dispose of the same for the benefit of such town; and may do all other acts authorized by municipal, state and federal law as the stated and implied powers of a municipality; and may have and use a common seal, which may be changed at its pleasure.

Section 1.02. Boundaries. The boundaries of the Town of Smyrna shall be as fixed by Section 1 of Chapter 284 of the Acts of Tennessee of 1915, as amended, and any subsequent annexations or detachments of territory made pursuant to law.

Section 1.03. Territorial jurisdiction. The town council may, by ordinance or resolution, authorize the institution of all suits and proceedings necessary to abate and suppress any acts, practices or conditions, constituting or liable to constitute a nuisance in relation to said town and the inhabitants thereof, whether existing within the corporate limits set out in Section 1.02 above, or within all surrounding territory within one mile of said corporate limits. The police force of the town shall have the power and authority within one (1) mile of said corporate limits and as set forth in *Tennessee Code*

Annotated, Sections 6-54-301, 6-54-302, and 6-54-303, as amended, and such other authority as may be now or hereinafter provided by applicable private or public act of the General Assembly of the State of Tennessee or the common law of the State of Tennessee.

ARTICLE II

Powers

Section 2.01. General Powers. The town council shall have the management and control of the town finances and all property of the corporation, real, personal and mixed, and shall have the power to:

(1) Assess, levy and collect taxes for all general and special purposes on all subjects or objects of taxation and privileges taxable by law for state, county or municipal purposes;

(2) Adopt classifications of the subjects and objects of taxation that are not contrary to law;

(3) Make special assessments for local improvements;

(4) Contract and be contracted with;

(5) Incur debts by borrowing money or otherwise and give any appropriate evidence thereof in the manner hereinafter provided;

(6) Issue and give, sell, pledge or in any manner dispose of negotiable or non-negotiable interest-bearing or noninterest-bearing bonds, warrants, promissory notes or orders of the municipality in accordance with state law;

(7) Expend the money of the municipality for all lawful purposes;

(8) Acquire or receive and hold, maintain, improve, sell, lease, mortgage, pledge or otherwise dispose of property, real or personal, and any estate or interest therein within or without the municipality or state;

(9) Condemn property, real or personal, or any easement, interest or estate or use therein, either within or without the municipality, for present or future public use; the condemnation shall be effected in accordance with the term and provisions of state law;

(10) Take and hold property within or without the municipality or state upon trust and administer trusts for the public benefit;

(11) Acquire, construct, own, operate and maintain or sell, lease, mortgage, pledge or otherwise dispose of public utilities and telecommunications systems or any estate or interest therein, or any other utility or service to the municipality, its inhabitants or any part thereof; and, further, may issue debt for these purposes under the Local Government Public Obligations Act or other pertinent state law; provided, however, that with regard to telecommunications

systems, such powers must be exercised pursuant to and in compliance with the general laws of the State of Tennessee, including without limitation Tennessee Code Annotated Section 7-34-104 and Title 7, Chapter 52, Part 4 of the Tennessee Code Annotated as amended;

(12) Grant to any person, firm, association or corporation (including the municipality) franchises for public utilities, telecommunications systems, and public services to be furnished both inside and outside the municipality and inhabitants therein. The power to grant franchises embraces the power to grant exclusive franchises, except where prohibited by law. Whenever an exclusive franchise is granted, it shall be exclusive not only as against any other person, firm, association, or corporation. Franchises may be granted for a period of time to be fixed by the town council, but not to exceed twenty-five (25) years. The council may prescribe in each grant of a franchise, the rate, fares, charges and regulations that may be made by the grantee of the franchise in accordance with state and federal law. Franchises may by their terms apply to the territory within the corporate limits of the municipality at the date of the franchises, and may also apply to any or all subsequent modifications to the corporate limits, and to the existing streets, alleys and thoroughfares that thereafter may be opened; provided, however, that with regard to telecommunications services and telecommunications services providers, this paragraph shall confer no more and no less power than is conferred by the general law of the State of Tennessee;

(13) Make contracts with any person, firm, association or corporation for public utilities, telecommunications systems, and public services to be furnished both inside and outside the municipality and inhabitants therein. The power to make contracts embraces the power to make exclusive contracts. When an exclusive contract is entered into, it shall be exclusive against any other person, firm, association or corporation. These contracts may be entered into for a period of twenty-five (25) years or less, but not longer. The council may prescribe in each such contract entered into, the rates, fares, charges, and regulations that may be made by the person, firm, association or corporation with whom the contract is made. Such contracts may by their terms apply to the territory within the corporate limits of the municipality at the date of the contract, may also apply to any or all subsequent modifications to the corporate limits, and to the then existing streets, alleys and thoroughfares and to any other streets, alleys and other thoroughfares that thereafter may be opened; provided, however, that with regard to telecommunications services and telecommunications services providers, this paragraph shall confer no more and no less power than is conferred by the general law of the State of Tennessee;

(14) Prescribe reasonable regulations regarding the construction, maintenance, equipment, operation and service of public utilities and telecommunications systems, compel reasonable extensions of facilities for these services, and assess fees for the use of, or impact upon these services. Nothing herein shall be construed to permit the alteration or impairment of any of the terms or provisions of any exclusive franchise granted or of any exclusive contract entered into under subdivisions (12) and (13); provided, however, that with regard to telecommunications services and telecommunications services providers, this paragraph shall confer no more and no less power than is conferred by the general law of the State of Tennessee;

(15) Establish, open, relocate, vacate, alter, widen, extend, grade, improve, repair, construct, reconstruct, maintain, light, sprinkle and clean public highways, streets, boulevards, parkways, sidewalks, alleys, parks, public grounds, public facilities, libraries and squares, wharves, bridges, viaducts, subways, tunnels, sewers and drains within or without the corporate limits, regulate their use within or without the corporate limits, assess fees for the use of or impact upon such property and facilities, and take and appropriate property therefor under the provisions provided by the general laws of the state;

(16) Construct, improve, reconstruct and reimprove by opening, extending, widening, grading, curbing, guttering, paving, graveling, macadamizing, draining or otherwise improving any streets, highways, avenues, alleys or other public places within and without the corporate limits, and assess a portion of the cost of these improvements on the property abutting on or adjacent to these streets, highways or alleys under, and as provided by, state law;

(17) Assess against abutting property within and without the corporate limits the cost of planting shade trees, bushes, shrubs, and other vegetation, removing from sidewalks all accumulations of snow, ice, and earth, cutting and removing obnoxious weeds and rubbish, street lighting, street sweeping, street sprinkling, street flushing, and street oiling, the cleaning and rendering sanitary or removal, abolishing, and prohibiting of closets and privies, in such manner as may be provided by general law or by ordinance of the council;

(18) Acquire, purchase, provide for, construct, regulate and maintain and do all things relating to all marketplaces, public buildings, bridges, sewers and other structures, works and improvements inside and outside the municipality;

(19) Collect and dispose of drainage, sewage, ashes, garbage, refuse or other waste, or license and regulate their collection and disposal inside and outside the municipality, and the cost of collection, regulation, or disposal may be funded by taxation, special assessment to the property owner, user fees or other charges;

(20) License and regulate all persons, firms, corporations, companies and associations engaged in any business, occupation, calling, profession or trade not prohibited by law;

(21) Impose a license fee upon any animal, object, business, vocation, pursuit, privilege or calling not prohibited by law;

(22) Define, prohibit, abate, suppress, prevent and regulate all acts, practices, conduct, business, occupations, callings, trades, use of property and all other things whatsoever detrimental, or liable to be detrimental, to the health, morals, comfort, safety, convenience or welfare of the inhabitants of the municipality, and exercise general police powers;

(23) Prescribe limits within which business occupations and practices liable to be nuisances or detrimental to the health, morals, security or general welfare of the people may lawfully be established, conducted or maintained;

(24) Inspect, test, measure and weigh any article for consumption or use within the municipality, and charge reasonable fees therefor, and provide standards of weights, tests and measures;

(25) Regulate the location, bulk, occupancy, area, lot, location, height, construction and materials of all buildings and structures, and inspect all buildings, lands and places as to their condition for health, cleanliness and safety and, when necessary, prevent their use and require any alteration or changes necessary to make them healthful, clean or safe;

(26) Provide and maintain charitable, educational, recreative, curative, corrective, detentive, or penal institutions, departments, functions, facilities, instrumentalities, conveniences and services;

(27) Purchase or construct, maintain and establish a workhouse for the confinement and detention of any person convicted in the town court of offenses against the laws and ordinances of the municipality who fails to secure the fine imposed upon such person, or contract with the county to keep these persons in the workhouse of the county and provide by that contract and by ordinance for the commitment of these persons to the workhouse so provided until the fines are paid;

(28)

(A) Enforce any ordinance by fines, forfeitures, and penalties, and by other actions or proceedings in any court of competent jurisdiction; and

(B) No fine, forfeiture or penalty may exceed fifty dollars (\$50.00) or the maximum allowable under general state law, whichever is greater, for violation of municipal ordinances;

(29) Regulate, tax, license or suppress the keeping or going at large of animals within the municipality, impound them, and in default of redemption, sell or euthanize them;

(30) Call elections as herein provided;

(31) By ordinance, assess, impose, levy and collect impact fees from new land developments within the municipal limits, provided that the impact fees are limited to the reasonably anticipated costs of public improvements generated by such developments, and provided that the impact fee system and formula is prescribed by ordinance;

(32) Plan for the orderly development of the community, including economic, physical, educational and cultural aspects, and to institute programs to effectuate such plans.

(33) Compel railroad companies at their expense to provide gates, watchmen, lights, gongs, or other warning devices at grade crossings; to

construct and maintain such crossings, and to eliminate grade crossings and improve railroad overpasses and underpasses.

(34) Create and empower boards, commissions, committees and agencies to facilitate the orderly and efficient implementation of governmental tasks, regulations, and policies.

(35) Exercise and have all other powers, functions, rights, privileges and immunities granted by general law or necessary or desirable to promote or protect the safety, health, peace, security, good order, comfort, convenience, morals, and general welfare of the town and its inhabitants, and all implied powers necessary to carry into execution all powers granted in this charter as fully and completely as if such powers were fully enumerated herein. No enumeration of particular powers in this charter shall be held to be exclusive of others nor restrictive of general words and phrases granting powers, but shall be held in addition to such powers unless expressly prohibited to cities by the constitution or general laws of the state.

ARTICLE III

Miscellaneous and Transitional Provisions

Section 3.01. Corporate existence, existing ordinances and resolutions. The corporate existence of the Town of Smyrna is continued. All existing ordinances, resolutions or other actions of the town council consistent with this charter shall remain in full force and effect until amended or repealed in the manner herein provided.

Section 3.02. Expiration of terms of elected officers. The mayor and commission members in office when this act is ratified shall continue in office as the mayor and council members until their successors are elected and qualified.

Section 3.03. Legal effect of this act. This act is declared to be a public act, and may be read in evidence in all courts of law and equity. All ordinances and resolutions and proceedings of the town council created by this charter may be proven by the seal of said corporation, attested by the town clerk, and, when certified by the town clerk, shall be received in evidence in all courts and places without further proof.

Section 3.04. Conflicting acts. All private acts and parts of private acts in conflict with this act be and the same are hereby superseded from and after the effective date of this act as hereinafter provided.

Section 3.05. Severability. If any article, section, subsection, paragraph, sentence, or part of this charter shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair any other parts of this charter unless it clearly appears that such other parts are necessarily dependent upon the part or parts held to be invalid or unconstitutional. It is the legislative intent in enacting this charter that each article, section, subsection, paragraph, sentence, or part be enacted separately and independently of each other.

Section 3.06. Gender. Wherever, in this charter, "man, men, him, his" or their related pronouns may appear, either as words or as parts of words, they have been

used for literary purposes and are meant in their generic sense (i.e., to include all humankind-both female and male sexes).

Section 3.07. Construction. The powers of the town under this charter shall be construed liberally in favor of the town, and the specific mention of particular powers shall not be construed as limiting the general powers.

Section 3.08. Legal process. All legal process against the town shall be served upon the town manager or the town attorney.

Section 3.09. Amendments to Charter. Amendments to the town charter may be enacted by ordinance according to the following procedures:

- (a) Passage by a two-thirds (2/3) majority of council members;
- (b) Publication of the full text of the proposed ordinance in a newspaper of general circulation in the town once a week for three (3) consecutive weeks prior to the public hearing;
- (c) Public hearing conducted according to law;
- (d) Passage on second reading by a two-thirds (2/3) majority of council members;
- (e) Ratification by the voters by referendum held at the next town election, or if deemed necessary by the town council, in a special election conducted in accordance with relevant election law.
- (f) Passage of the amendment by the General Assembly of the State of Tennessee;
- (g) Ratification by the town council by a two-thirds (2/3) majority of council members.

ARTICLE IV

Elections

Section 4.01. Date of general town election. A general town election shall be held on the second Tuesday of November, 2000, and each odd-numbered year thereafter. Special elections and referendums may be held at the direction of the town council in accordance with Section 5.15 and the general state law.

Section 4.02. General election laws apply. All elections shall be conducted by the election commissioners of Rutherford County in accordance with the general election laws of the state and this charter.

Section 4.03. Voter qualification requirements. Persons meeting the residency requirements prescribed by the election laws of the State of Tennessee and who reside within the corporate limits of the Town of Smyrna, and who are otherwise qualified to

vote in state elections shall be eligible to vote in town elections, provided the person is properly registered in accordance with the applicable laws of the State of Tennessee.

Section 4.04. Election procedure. On the second Tuesday in November of every odd year, there shall be held a regular election in the Town of Smyrna, for the purpose of electing members of the town council and a mayor. Every such regular election shall be called, ordered and published by the election commissioners for Rutherford County, Tennessee, by publication of a notice of election, not less than forty-five (45) days prior to the date of election, in some newspaper in general circulation in the Town of Smyrna, or if there be no such newspaper, then in some newspaper of general circulation therein (if any) and by posting of such notice of election on the Town Hall door, at the office of said election commissioners, and at two (2) other public places within said town, such notice of election to state the time and place of holding such election and the purposes thereof; and it shall be the duty of said election commissioners to publish a combination notice of election, locations of the several voting places, and names of all officers, judges, clerks, and any other officials appointed to hold the same, in the manner hereinabove in this paragraph provided, not more than ten (10) days nor less than three (3) days prior to the election.

Section 4.05. Council member terms and transition. In the general town election held on November 9, 1999, two (2) town council members shall be elected to succeed the two commissioners presently acting as Commissioner of Parks and Recreation and Commissioner of Health and Public Safety, Planning and Public Utilities. Said terms of office shall be for four (4) years. The two (2) town council members elected in the November 9, 1999, town election shall remain as commissioners of their respective departments until the ratification of this act, at which time they will continue to serve out their terms as councilmen at large. At the November 7, 2000, election the citizens shall elect two (2) council members to bring the total number on the town council to seven (7). The candidate who receives the highest number of votes shall serve a three (3) year term until the next town election. The candidate who receives the second highest number of votes shall serve a one (1) year term. At the November 2001, town election the citizens of Smyrna shall elect a mayor and three (3) council members for a four (4) year term. At the November 2003, town election the citizens shall elect three (3) council members for a four (4) year term. Thereafter, the terms of the mayor and all council members shall continue to be four (4) year terms on a staggered basis.

Section 4.06. Abridgment of terms. Nothing in this act shall be construed as having the effects of removing an incumbent from office or abridging the terms of any official prior to the end of the term for which said incumbent was elected.

Section 4.07. Procedure for tie votes. In case of a certified tie vote between two (2) or more candidates for council members, the town council shall, within ten (10) days, convene in special session before the regularly scheduled December town council meeting and vote between the respective candidates to break the tie, or in the alternative, the legislative body may call for a run-off election between the tied candidates.

ARTICLE V

Town Council

Section 5.01. Composition. The governing body of Smyrna shall consist of the mayor and four (4) council members until the election of November 7, 2000. Following that election, the composition of the town council shall consist of the mayor and six (6) council members elected by the voters of Smyrna pursuant to the provisions of this charter, and shall be known as the town council. The term of office for the mayor and all council members shall be four (4) years, except as herein provided; and as herein provided their terms shall be staggered.

Section 5.02. Election of vice-mayor. The town council, at the first regular meeting after ratification of this charter, and at the first regular meeting in December following the general town election in every odd-numbered year thereafter, shall elect one of their number as vice-mayor to carry out the duties of mayor in his/her absence, for a term of two (2) years. If the office of mayor shall become vacant, the vice-mayor shall automatically become mayor for the remainder of the unexpired term; and in the latter event, the council shall elect another of its members to the office of vice-mayor to serve during the remainder of the unexpired term. The council shall, in accordance with the provisions of Section 5.07 of this article, fill the vacancy in the council created by the vice-mayor becoming mayor.

Section 5.03. Qualifications for office. The mayor and council members shall be qualified voters of the town at least twenty-one (21) years of age, and shall hold no other elected public office. No other person shall be eligible for the office of mayor or council member at large unless he/she shall have been for at least one (1) year next preceding his/her election a resident of the Town of Smyrna. Candidates shall be permitted to file a nominating petition for only one (1) office in any general town election. No person shall become mayor or council member who has been convicted of malfeasance in office or a crime involving moral turpitude. A mayor or a council member who files a nominating petition for mayor or a council position other than his own and whose own position is not up for re-election must resign his current position as mayor or council member at least thirty (30) days prior to the filing deadline for nominating petitions for the next general town election. No council member shall hold any other elected public office or other town office or employment during the term for which the member was elected to the council. No former council member shall hold any compensated office or employment with the town until six (6) months after leaving office. Nothing in this section shall be construed to prohibit the council from selecting any current or former council member to represent the town on the governing board of any regional or other intergovernmental agency.

Section 5.04. Salaries. The town council may set the annual salary of the town council by ordinance, but no ordinance establishing or increasing such salary shall become effective until the expiration of the current terms of the mayor and all council members; provided, however, that until said salaries are so set the salary of the mayor shall be six hundred dollars (\$600.00) per month and each council member shall be four hundred dollars (\$400) per month. The mayor and council members shall be entitled to reimbursement for the expenses they incur in the performance of the duties of their offices or employment, under the provisions of the adopted travel and reimbursement ordinance or resolution.

Section 5.05. Time and place of meetings. The town council shall, by resolution, fix the time and place at which the regular meetings of the town council shall be held. Until otherwise provided by resolution, the regular meeting of the town council

shall be held at 7:00 p.m. on the second Tuesday of each month. When such day falls on a legal holiday, the meeting shall be on the next following day unless otherwise prescribed by the town council. Whenever in the opinion of the mayor or any three (3) council members, the welfare of the town demands it, the town manager shall call a special meeting of the town council. All town council meetings shall be open to the public except where provided by law.

Section 5.06. The office of mayor. The mayor shall preside at all meetings of the town council at which he is present and, in his absence, the vice-mayor shall preside, and in the absence of the mayor and vice-mayor, the town council shall designate one of their number to preside. The mayor shall be the ceremonial head of the town. The mayor shall have a vote, and shall have no veto power over all actions of the town council. The mayor shall sign the minutes of the meeting of the council, all ordinances on their final passage, and execute all deeds, bonds, contracts or legal instruments made in the name of the town.

Section 5.07. Vacancies. A vacancy shall exist, and the town council shall declare the same, by resolution, if the mayor or a council member either resigns, dies, moves their residence from the town, is convicted of malfeasance or misfeasance in office, a felony, a violation of this charter or election laws of the state, or a crime involving moral turpitude. Abstentions shall be counted neither as a yes nor a no vote. Provided, however, a member of the town council may not resign his position for the purpose of being appointed to a longer term on the town council. Any vacancy in the town council shall be filled until the next town election by appointment made by the remaining members thereof. In the event of the occurrence of any vacancy in the town council which may, under the provisions of this section, be filled by appointment by the remaining council members, and such remaining council members shall fail or neglect to fill such vacancy within sixty (60) days of its occurrence, and there is more than one (1) year remaining prior to the next town election, it shall be the duty of the election commissioners of Rutherford County, upon certification of such facts to them by the mayor or any council member, to call and cause to be held, as hereinabove provided, a special election for the purpose of filling such vacancy for the remainder of the unexpired term, provided such certification be made to the election commissioners for Rutherford County within sufficient time to permit the holding of such special election at least one hundred eighty (180) days prior to the general town election.

Section 5.08. Oath of office. The mayor, council members, and town judge before entering upon their duties, shall each take, subscribe and file with the town manager an oath or affirmation that they will support the Constitution of the United States and of the State of Tennessee and the charter and ordinances of the Town of Smyrna, and that they will faithfully discharge the duties of their office. Said oath shall be administered by the town judge, general sessions judge, or judge of a court of record.

Section 5.09. Quorum, attendance, and adjournment. A majority of all the members of said council, excluding vacancies, shall constitute a quorum, but a smaller number may adjourn from day-to-day and may compel the attendance of the absentees in such manner and under such penalties as the town council may provide. A regular meeting at which a quorum is present may be recessed by a majority vote, either from day-to-day, or from time-to-time; but no such recess shall be taken to a date beyond the next regular meeting; and any recessed meeting shall continue as a regular meeting throughout such recess.

Section 5.10. Style and passage of ordinances. The style of all town ordinances shall be: "Be it ordained by the town council of the Town of Smyrna:" Each ordinance shall be passed at two (2) separate meetings on two (2) separate days before the same is operative. However, at least thirteen (13) days shall have lapsed between the first and final passage of any ordinance. A reasonable number of written copies of ordinances shall be available to the public at the meetings and at town hall before the second and final passage by the town council. Ordinances, resolutions and other measures of the town council shall be passed by an affirmative vote of a majority of the council members present and voting. Abstentions shall be counted neither as a "yes" nor a "no" vote. All ordinances, resolutions and motions must be enacted by an affirmative vote of at least three (3) council members.

Section 5.11. Minutes of meetings. A full and accurate record of all business transacted by the town council shall be prepared by the town clerk, as provided in Section 7.02, and shall be approved by the town council and preserved in permanent book form.

Section 5.12. Power to Subpoena. The town council shall have power, and may delegate it to any committee selected from its members, to subpoena witnesses, and order the production of books and papers relating to any subject within its jurisdiction; to call upon its own officers to execute its process; and punish by fine or imprisonment, or both, any person refusing to obey such subpoena.

Section 5.13. Judge of qualifications. The town council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office. Any member of the town council may be removed from office by the remaining members of the town council for crime in office, for grave misconduct showing unfitness for public duty, for wilful neglect of their duties, or for permanent disability, by a majority vote of such remaining members of the council. The council shall have the power to set additional standards of conduct for its members beyond those specified in the charter and may provide for such penalties as it deems appropriate, including forfeiture of office. The proceedings for such removal shall be upon:

(a) Specific charges must be submitted in writing, which, with a notice stating the time and place of the hearing shall be served on the accused or published at least three (3) times on three (3) successive days in a daily newspaper circulating the town;

(b) The hearing shall be public and the accused shall have the right to appear and defend in person or by counsel and have process of the board to compel the attendance of witnesses in their behalf. Such vote shall be determined by yeas and nays, and the names of the members voting for or against such removal shall be entered in the minutes;

(c) Immediately upon the vote for removal the term of the accused shall expire and their official status, power, and authority shall cease without further actions; and,

(d) Anyone removed hereunder shall have the right of appeal to the Chancery Court of Rutherford County.

Section 5.14. Investigations. The town council may investigate the affairs of the town and the conduct of any town department, office or agency and for this purpose may subpoena witnesses, administer oaths, take testimony and require the production of evidence.

ARTICLE VI

Town Manager

Section 6.01. Town manager appointment, salary, removal. The town council shall appoint and fix the salary of the town manager, who shall serve at the will of the town council. The town manager shall be appointed by virtue of experience and/or educational qualifications for this position. Neither the mayor nor any member of the town council shall be eligible for appointment as town manager until two (2) years have elapsed after such member shall have ceased to be mayor or a member of the town council.

Section 6.02. Residence. Residence in the town at the time of appointment of a town manager shall not be required as a condition of the appointment, but within ninety (90) days after reporting for work, the town manager must become a resident of the Town of Smyrna.

Section 6.03. Absence of the town manager. In the temporary absence or disability of the town manager, the assistant town manager, if such position be established, or any other department head designated by the town manager shall serve as acting town manager. If and when the town manager's absence exceeds thirty (30) consecutive days, the town council shall have the right to appoint another department head or another town employee the acting town manager.

Section 6.04. Powers and duties of the town manager. The town manager shall be the chief administrative officer of the town. The town manager shall be responsible to the town council for the administration of all town affairs placed in his charge by or under this charter. The town manager shall have the following powers and duties:

(1) To appoint and, when deemed necessary for the good of the service, suspend or remove any town employees and appointive officers as provided for by or under this charter or personnel rules adopted pursuant to this charter.

(2) To direct and supervise the administration of all departments, offices, and agencies of the town, except as provided by this charter or by law. Said direction and supervision shall be through the appropriate department directors according to the chain of command and in conformity with all personnel and administrative procedures provided pursuant to this charter, including, but not limited to, procedures of the Employee Review Board.

(3) To attend all council meetings and have the right to take part in discussion, but may not vote.

(4) To see that all laws, provisions of this charter and acts of the board, subject to enforcement by the town manager or by officers subject to his direction and supervision, are faithfully executed.

(5) To coordinate and submit the annual budget and an annual capital budget update to the town council at the appropriate time.

(6) To submit to the town council and make available to the public a complete report on the finances and administrative activities of the town as of the end of each month and at the end of the fiscal year.

(7) To make such other reports as the town council may require concerning the operations of town departments, offices and agencies subject to the town manager's direction and supervision.

(8) To supervise the purchase of all materials, supplies and equipment for the proper conduct of the town government and its affairs.

(9) To supervise and control the collection of all taxes, assessments and privileges due the town.

(10) To keep the town council fully advised as to the financial condition and future needs of the town and make such recommendations to the town council concerning the affairs of the town as he deems desirable.

(11) To recommend the compensation of all officers and employees of the town within the limits of the appropriations ordinance and in accordance with the comprehensive pay plan adopted by the town council.

(12) The town council may not remove these powers and duties from the town manager but may require the town manager to perform such other duties as are specified in this charter or as may be required by the town council.

Section 6.05. Council - administrative relations. The town council and its members shall deal with the administrative services of the town only through the town manager, except for the purpose of inquiry, and neither the town council nor any member thereof shall give orders or instructions to any subordinates of the town manager. The town manager shall take orders and instructions from the council only when sitting in a duly convened meeting of the town council, and no individual member shall give any orders or instructions to the town manager.

Section 6.06. Removal of town manager. The town manager shall not be removed from office, other than for misconduct in office, during or within a period of ninety (90) days following the beginning of a new term of office next succeeding any general municipal election held in the town, at which election a new member of the town council is elected, or when a new member is appointed. The purpose of this provision is to allow any newly elected or appointed member of the town council to observe the actions and ability of the town manager in the performance of the powers and duties of his office. After the expiration of the ninety (90) day period aforementioned, the town manager may be removed only by a majority vote of the town council present and voting. Abstentions shall be counted neither as a "yes" nor a "no" vote.

ARTICLE VII

Town Clerk

Section 7.01. Appointment, compensation, and specific requirements, powers, and duties of office. The town clerk shall be appointed by the town manager. The town clerk shall be bonded in such amount as may be provided by ordinance. The town clerk shall by signature and the town seal, attest all instruments signed in the name of the town and shall have power to administer oaths.

Section 7.02. Shall keep minutes. It shall be the duty of the town clerk to be present at all meetings of the town council and to keep a full and accurate record of all business transacted by the same, to be preserved in permanent book form. Said record shall be available to the public for inspection and copying at a reasonable rate.

Section 7.03. Shall be custodian of public records, bonds, etc. The town clerk shall have custody of and preserve in his/her office, the town seal, the public records, original rolls of ordinances, ordinance books, minutes of the town council, contracts, bonds, title deeds, certificates and papers, all official indemnity or surety bonds (except his/her own bond, which shall be in the custody of the town manager), and all other bonds, oaths and affirmations and all other records, papers and documents not required by this charter or by ordinance to be deposited elsewhere, and register them by numbers, dates and contents, and keep an accurate and modern index thereof.

Section 7.04. Shall provide and certify copies of records, papers, etc. The town clerk shall provide, and, when required by any office or person, certify copies of records, papers and documents in his office and charge therefor, for the use of the town, such fees as may be provided by ordinance; and shall cause copies of ordinances to be printed, as may be directed by the town council, and kept in his office for distribution.

Section 7.05. Shall perform any other duties imposed. The town clerk shall also perform any other duties imposed upon him by the town manager.

Section 7.06. Absence of town clerk. In the temporary absence or disability of the town clerk, the assistant town clerk, if such position be established, or another employee designated by the town manager shall serve as acting town clerk.

ARTICLE VIII

Town Attorney

Section 8.01. Qualifications. The town attorney shall be an attorney-at-law entitled to practice in the courts of the State of Tennessee.

Section 8.02. Appointment, duties, and compensation. The town attorney shall be appointed by the town council and shall direct the management of all litigation in which the town is a party, including the function of prosecuting attorney in the town court; represent the town in all legal matters and proceedings in which the town is a party or interested, or in which any of its officers is officially interested; attend all meetings of the town council; advise the town council and committees or members thereof, the town

manager, and the heads of all departments and divisions as to all legal questions affecting the town's interests; and approve as to form all contracts, deeds, bonds, ordinances, resolutions and other documents to be signed in the name of or made by or with the town. His compensation shall be as fixed by the town council and he/she shall serve at the will of the town council.

ARTICLE IX

Town Court

Section 9.01. Town court established. There is hereby established within the Town of Smyrna a town court, which shall have jurisdiction over all infractions of municipal ordinances of the Town of Smyrna. The town judge shall try all of the persons charged with violation of the ordinances of the town, and shall have the power to levy fines, penalties and forfeitures not exceeding fifty dollars (\$50.00) or the maximum allowable under general state law, whichever is greater, for each offense, and to impose such costs as the council may by ordinance establish. The town judge is authorized to offer persons assessed a fine or penalty and costs for the violation of a municipal ordinance the option of performing community service for the town in lieu of paying all or a portion of the fine or penalty and costs; provided that the town has first established a community service system. In accordance with Section 9.02 (b) of this Article, jurisdiction of the town court may also include concurrent jurisdiction with courts of general sessions in any cases of the violation of criminal laws committed within the corporate limit of the Town of Smyrna, including the jurisdiction to conduct preliminary examinations and bind over defendants to the grand jury for indictment.

Section 9.02. Appointment, election, qualifications, oath, compensation, and restrictions on office of town judge.

(a) The town council shall appoint a town judge who shall serve at the will of the council. The town judge holding office at the time of adoption of this town charter, or the successor to the town judge should a vacancy occur, shall continue to serve as town judge for the remainder of his term until he is reappointed or his successor is appointed. Only registered voters who are thirty (30) years of age, licensed to practice law in the State of Tennessee, have been a resident of the State of Tennessee for five (5) years and a resident of the Town of Smyrna for one (1) year shall be eligible for appointment to the office of town judge. The town judge's term of office shall begin with the oath of office following his appointment by the town council. The oath of office shall be the same as the oath required for the mayor or council members. The town council shall set the salary of the town judge each year with the adoption of the budget.

(b) The town council may, by ordinance, determine that the town court shall exercise its jurisdiction concurrently with the general sessions court beginning with the next general town election. Such ordinance must be passed at least six (6) months prior to the next regular town election. Such ordinance shall also provide for the election of a town judge at the next regular town election. The qualifications for an elected town judge shall be the same as those for an appointed town judge. The initial term of office for an elected town judge shall be for such period of time as is necessary to align the subsequent elections for the town judge with the state general election for general sessions and other

inferior court judges. The term of office for subsequent elected town judges exercising concurrent jurisdiction shall be eight (8) years and they shall hold office until their successors are elected and qualified and have taken their oath of office on the first day of September following their election. The town judge shall be eligible for re-election. The town judge's compensation cannot be adjusted during his term of office. Elected town judges exercising concurrent jurisdiction shall not be eligible to hold other elective or appointive offices for the Town of Smyrna, or to hold another position of employment with the Town of Smyrna.

(c) In the event that the town judge already exercises general sessions jurisdiction at the time of the passage of this charter, said judge shall continue to exercise said jurisdiction until the completion of his/her term.

Section 9.03. Town court clerk election, qualifications, oath and compensation.

At the time the town council adopts an ordinance authorizing the town court to exercise its jurisdiction concurrently with general sessions courts, the town council may within that same ordinance authorize the election of a town court clerk at the next regular town election. Only registered voters who have been residents of the Town of Smyrna for one (1) year shall be eligible to seek the office of town court clerk. The initial term of office for an elected town court clerk shall be for such period of time as is necessary to align the subsequent elections of the town court clerk with the state general election for inferior court clerks. The term of office for subsequent town court clerks shall be four (4) years and they shall take office on the first day of December following the regular town election in November. They shall take the same oath of office as required of the town judge and they shall serve until their successors have been elected and qualified. The town court clerk shall be eligible for re-election. The town court clerk's compensation cannot be adjusted during his term of office.

Section 9.04. Court policies and procedures. The policies and procedures governing the day-to-day operations of the court shall be provided by ordinance.

Section 9.05. Town judge to be exclusive judge of law and facts. The town judge shall be the exclusive judge of the law and facts in every case before him, and no official or employee of the town shall attempt to influence his decision except through pertinent facts presented in court.

ARTICLE X

Administration

Section 10.01. Departments, offices and agencies generally. The town council may establish town departments, offices or agencies in addition to those created by this charter, and may prescribe the functions of all departments, offices and agencies consistent with this charter. Departments, offices and agencies created by the town council may be abolished or combined by the council. The council shall solicit the recommendations of the town manager for any restructuring of departments, offices and agencies.

Section 10.02. Direction and supervision of departments, offices, or agencies. All departments, offices and agencies under the direction and supervision of the town manager shall be administered by an officer appointed by and subject to the direction and supervision of the town manager. The town manager may serve as the head of one

(1) or more such departments, offices or agencies or may appoint one (1) person as the head of two (2) or more of them.

Section 10.03. Personnel rules. The town council shall adopt personnel rules which shall include, but not be limited to:

(1) A job classification plan;

(2) A pay plan;

(3) The hours of work, attendance regulations and provisions for sick and vacation leave; and

(4) A rule addressing conflict of interest of town employees in the performance of their duties.

Section 10.04. Officers, employees, etc., who handle money shall be bonded. The town manager and every officer, agent and employee having duties embracing the receipt, disbursement, custody, or handling of money shall, before entering upon his duties, execute a surety bond with some surety company authorized to do business in the State of Tennessee, as surety, in such amount as shall be prescribed by ordinance or this charter. All such bonds and sureties shall be subject to the approval of the town council, and the town council may provide for blanket bonds. The cost of all bonds shall be an expense of the town.

Section 10.05. Employee review. The town council is authorized to establish by ordinance an Employee Review Board, and to establish policies, procedures, and guidelines to promote fairness and efficiency in the administration of employment matters.

ARTICLE XI

Finance

Section 11.01. Fiscal year. The fiscal year of the town shall begin on the first day of July and end on the last day of June.

Section 11.02. Annual departmental budgets required. The adoption of an annual budget for each department shall be a prerequisite to the appropriation of money for municipal purposes and the levy of property taxes.

Section 11.03. Town manager required to prepare and submit annual budget and explanatory message. At least sixty (60) days before the beginning of the fiscal year the town manager shall prepare and submit to the town council a budget for the ensuing fiscal year and an accompanying message. The town manager's message shall explain the budget both in fiscal terms and in terms of work programs. It shall outline the proposed financial policies of the town for the ensuing fiscal year, describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues together with the reasons for such changes,

summarize the town's debt position and include such other material as the manager deems desirable.

Section 11.04. Required content and organization of budget. The budget shall provide a complete financial plan of all town funds and activities for the ensuing fiscal year and, except as required by law or this charter, shall be in such form as the town manager deems desirable or the town council may require.

Section 11.05. Amendments to budget, when budget must be adopted, and effect of adoption. After the first reading the town council may adopt the budget with or without amendment, but no amendment shall decrease expenditures required by law for debt service. The budget shall be adopted for the ensuing fiscal year before the end of the current fiscal year. Adoption of the budget shall constitute appropriations of the amounts specified therein as expenditures from the funds indicated and shall constitute a levy of the property tax therein proposed.

Section 11.06. Supplemental appropriations. If during the fiscal year the town manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the town council by ordinance may make supplemental appropriations for the year up to the amount of such excess.

Section 11.07. Deficits. If at any time during the fiscal year it appears probable to the town manager that the revenues available will be insufficient to meet the amount appropriated, he shall report to the town council without delay, indicating the estimated amount of the deficit, any remedial action taken by him and his recommendations as to any other steps to be taken. The town council shall then take such further action as it deems necessary to prevent or minimize any deficit and for that purpose it may by ordinance reduce appropriations.

Section 11.08. Transfer of unencumbered appropriations. At any time during the fiscal year the town manager may transfer part or all of any unencumbered appropriation balance among programs within a department, office or agency and, upon a written request by the town manager, the town council may by resolution transfer part or all of any unencumbered accumulated balances from one department, office, or agency to another.

Section 11.09. Lapsing of appropriations. Every appropriation shall lapse at the end of the fiscal year to the extent that it has not been expended or encumbered.

Section 11.10. Incurrence and discharge of obligations. No payment shall be made or obligation incurred against any appropriation unless the town manager or an officer designated by him first certifies that an appropriation has been made for that purpose and that there is unexpended and unencumbered in the appropriation for this purpose an amount sufficient to meet the obligation or to make the expenditure. However, except where prohibited by law, nothing herein shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year.

Section 11.11. Accounting records and audits. There shall be installed and maintained adequate accounting records in accordance with generally accepted

principles of municipal accounting. The same account titles shall be used throughout the accounting records, the budget and financial statements. Constant and comprehensive budgetary control shall be maintained. An audit of the financial affairs of the town shall be required by action of the town council and same be made after the end of each fiscal year by a public accountant skilled in such work. Any taxpayer may file a bill in chancery court to compel the town council to have the audit made if such accountant has not been employed within one (1) month after the end of the fiscal year.

Section 11.12. Competitive bidding and purchasing procedures. Purchasing and bidding procedures shall be established by ordinance in accordance with state law.

ARTICLE XII

Taxation

Section 12.01. Assessment and levy. All property within the town not exempt by general law shall be assessed for taxation upon the same principles established in regard to state and county taxation. Assessments made by the county tax assessor may be adopted by the town.

Section 12.02. Due and delinquent dates; penalties and interest. Property taxes shall be payable on and after the first day in October of each year, and shall become delinquent on the first day of March following. The town council by ordinance shall fix penalties and interest on delinquent taxes.

Section 12.03. Collection of delinquent taxes. The town council may provide by ordinance for the collection of delinquent real property taxes by the town clerk as provided by general law; or by the town attorney acting in accordance with general laws providing for the collection of delinquent town or county taxes; or by the use of any other available legal process and remedies. If not otherwise collected, the town attorney, or other attorney designated by the town council, may file suit for collection of all delinquent taxes not later than eighteen (18) months following date of delinquency. Delinquent personal property taxes may be collected by distress warrants issued by the town clerk and placed in the hands of the town attorney for collection.

Section 12.04. County may collect taxes. The town may contract with the county for the collection of town taxes. The contract may provide for reasonable fees to be paid to the county for this service.

Section 12.05. Taxes not to be excused. No officer or employee of the town shall have the authority to excuse taxes, penalties, interest, special assessments or other charges due the town, but errors may be corrected when authorized by the town council.

Section 12.06. Alternative disposition of residential property. Property purchased by the town at delinquent tax sales and through other general laws of the state governing municipal condemnation and acquisition of dilapidated property, may be retained by the town for public purposes or sold for private or government use. However, for the purpose of insuring that any such property that is located in a residential zone is attractive and healthy and is returned to the town's tax roll, the town may give or sell at nominal consideration such property to Habitat for Humanity or other

similar organization; provided, that the organization agrees to construct, reconstruct, or refurbish a dwelling on such property and under its charter and/or bylaws to sell or give such property to a private property owner.

ARTICLE XIII

General Provisions

Section 13.01. Conflicts of Interest. The use of public office for private gain is prohibited. The town council shall implement this prohibition by ordinance. Regulations to this end shall include, but not be limited to: acting in an official capacity on matters in which the official has a private financial interest clearly separate from that of the general public; the acceptance of gifts and other things of value; acting in a private capacity on matters dealt with as a public official, the use of confidential information; and appearances by town officials before other town agencies on behalf of private interests. This ordinance shall provide for reasonable public disclosure of finances by officials with major decision-making authority over monetary expenditures and contractual matters and, insofar as permissible under state law, shall provide for fines and imprisonment for violations.

Section 13.02. Prohibitions.

(a) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any town position or appointive town administration office because of race, gender, age, handicap, religion, country of origin or political affiliation.

(b) No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the provisions of this charter or the rules and regulations made thereunder, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations.

(c) No person who seeks appointment or promotion with respect to any town position or appointive town administration office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his or her test, appointment, proposed appointment, promotion or proposed promotion.

(d) No town employee while acting in their capacity as a town employee shall knowingly or willfully make, solicit or receive any contribution to the campaign funds of any political party or committee to be used in a town election or to campaign funds to be used in support of or opposition to any candidate for election to town office or town ballot issue. Further, no town employee while acting in their capacity as a town employee shall knowingly or willfully participate in any aspect of any political campaign on behalf of or opposition to any candidate for town office. This section shall not be construed to limit any person's right to exercise rights as a citizen to express opinions or to cast a vote nor shall it be construed to prohibit any person from active participation in political campaigns at any other level of government.

SECTION 2. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the Legislative Body of the Town of Smyrna. Its approval or nonapproval shall be proclaimed by the presiding officer of the Legislative Body and certified to the Secretary of State.

SECTION 3. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective as provided in Section 2.

PASSED: February 2, 2000



JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 4th day of February 2000



DON SUNDQUIST, GOVERNOR